

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

- | | |
|---|---|
| I. O.A. No.60/1236/2017
II. O.A. No.60/54/2019
M.A. No.60/132/2019
III. O.A. No.60/1237/2017 | Date of decision: 28.11.2019

(Reserved on: 31.10.2019) |
|---|---|

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. PRADEEP KUMAR, MEMBER (A).

...

I. O.A. No.60/1236/2017

Satyawan, Assistant Sub Inspector, No.1274/CHG, aged 47 years, S/o Shri Jagdish Chander, resident of House No.621/4, Chamela Colony, Narwana, District Jind (Haryana), present resident of House No.143, Hem Vihar, Baltana (Zirakpur), District Mohali Group C.

... APPLICANT

VERSUS

1. Union Territory, Chandigarh Administration, Chandigarh through Administrator, U.T. Civil Secretariat, Sector-9, Chandigarh.
2. Director General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector-9 D, Chandigarh.

... RESPONDENTS

PRESENT: Sh. R.K. Sharma, counsel for the applicant.
Sh. Vinay Gupta, counsel for the respondents.

**II. O.A. No.60/54/2019
M.A. No.60/132/2019**

1. Prem Singh, Assistant Sub Inspector No.1297/CHG, age 36 years, S/o Sh. Kishan Singh, Police Department, U.T. Chandigarh, R/o House No.2744/A, Sector 42-C, Chandigarh-160036.

2. Suresh Kumar, Assistant Sub Inspector No.1296/CHG, aged 35 years, S/o Shri Ramu Ram, Police Department, U.T. Chandigarh, R/o House No.4256/A, Sector 46-D, Chandigarh-160047.
3. Surya Parkash, Assistant Sub Inspector No.1295/CHG, aged 43 years, S/o Sh. Jagdish Chander, Police Department, U.T. Chandigarh, R/o 152/1, Adarsh Nagar Pipliwala Town, Manimajra, U.T. Chandigarh-160101.
4. Suresh Kumar, Assistant Sub Inspector No.1294/CHG, Aged 37 years, S/o Shri Suraj Mal, Police Department, U.T. Chandigarh, R/o House No.427/A, Sector 46-D, Chandigarh-160047.

... APPLICANTS

VERSUS

1. Union Territory, Chandigarh Administration, Chandigarh through Administrator, U.T., Sector-6, Chandigarh.
2. Director General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector-9 D, Chandigarh.

... RESPONDENTS

PRESENT: Sh. R.K. Sharma, counsel for the applicants.
Sh. Vinay Gupta vice Sh. Aseem Rai, counsel for the respondents.

III. O.A. No.60/1237/2017

Asha Devi, P/ASI No.1280/CHG, Aged 35 years, D/o Sh. Ganesh Singh, R/o H. No.125, Darshni Bagh, Manimajra, U.T. Chandigarh. Group C.

... APPLICANT

VERSUS

1. Union Territory, Chandigarh Administration, Chandigarh through Administrator, U.T. Civil Secretariat, Sector-9, Chandigarh.
2. Director General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector-9 D, Chandigarh.

... RESPONDENTS

PRESENT: Sh. R.K. Sharma, counsel for the applicant.
Sh. A.L. Nanda, counsel for the respondents.

ORDER

...
SANJEEV KAUSHIK, MEMBER (J):-

1. This order shall dispose of above captioned three O.As as the order rejecting their claim is same and facts culminating into impugned order are also identical, thus, as requested by learned counsel for the parties, we decide to dispose of these OA through a common order as facts will not change ultimate relief.
2. For convenience, facts are being taken from O.A. No.60/1236/2017.
3. The applicant lays challenge to order dated 16.5.2017 (Annexure A-1), whereby his request for grant of seniority and notional consequential benefits w.e.f. 25.9.2012 as Assistant Sub Inspector of Police, the date from which the seniority has been given to his batch mates, who were appointed earlier to the applicant in the same selection pursuant to which the applicant has been appointed, in compliance to directions of the Hon'ble High Court, has been rejected.
4. Undisputed facts are that the Chandigarh Administration issued advertisement dated 18.2.2007 notifying 20 temporary posts of Assistant Sub Inspector (ASI) of Chandigarh Police in the pay scale of Rs.4550-7220 with usual allowances. Out of these 16 posts were reserved for Male (8 for General, 4 for OBC, 2 for SC and 2 for ex-serviceman [ESM]), 2 posts were reserved for Female (1 for General and 1 for SC). As per advertisement, selection was to be made in accordance with standing order No.33/2007 dated 31.1.2007 issued by respondent No.2. The applicant, who belongs to ex-serviceman category applied for the said post. He was subjected to physical measurement and efficiency test held between 15.5.2007 to

18.5.2007, which applicant cleared and thereafter was allowed to appear in the written examination held on 23.12.2007. Thereafter, respondents issued a list of successful candidates in which name of the applicant was included and he was subjected to interview held on 21.1.2008. Respondents released final merit list where name of the applicant was at Sr. No.1 in his category of ESM.

5. There were certain complaints against selection and criminal case was registered against persons allegedly involved in paper leak and ultimately selection was cancelled and decision was taken by Chandigarh Administration to go for fresh process from the stage of holding written examination which was held on 5.6.2011. Applicant qualified and he was placed at serial no.1 in the waiting list. It is not in dispute that most of the candidates of different categories joined pursuant to appointment letter dated 26.9.2012. Two candidates who were declared successful in the category of the applicant Sh. Krishan Dev Singh joined and other person namely Sh. Sanjeev Kumar whose name was at serial no.2 did not join. The applicant sought information under RTI and he was informed that Sh. Sanjeev Kumar whose name was at serial no.2 did not even appear for medical examination, copy of letter dated 23.6.2011 and 05.12.2012 is appended as Annexures A-5 and A-6. Consequently, the applicant submitted representation to respondent no.2 on 17.7.2013 requesting therein to consider his claim for appointment against second post under ESM category, as person at serial no.2 did not join. Despite repeated requests, claim of the applicant has not been considered. In the meantime, vide letter dated 6.8.2013, candidature of said Sh. Sanjeev Kumar was cancelled (Annexure A-

8). Thereafter, applicant again submitted representation based upon decision by the Hon'ble High Court in CWP No.16007-CAT of 2007 titled **Satinder Kumar vs. Central Administrative Tribunal, Chandigarh and others**, where similar issue has been put to rest. Despite his request, when the claim was not decided, applicant approached this Tribunal by filing O.A. No.60/354/2014, seeking issuance of a direction to the respondents to consider his claim which was dismissed vide order dated 19.1.2015. Aggrieved against that order, applicant approached Jurisdictional High Court by filing Civil Writ Petition No.2546 of 2015. The Hon'ble High Court issued notice and on 13.7.2015 passed detailed order directing department to reconsider whole issue with regard to recalculating the validity period of six months of waiting list. It is in furtherance thereto, respondents themselves offered appointment to the applicant by issuing appointment order on 6.1.2016 and thereafter the Writ Petition was disposed of as infructuous as relief claimed therein was granted. However, liberty was granted to applicant to raise plea for notional appointment from the date when other batch mates were offered the same. It is in this line that applicant submitted representation for relief which has been turned down by impugned order. Hence the O.A.

6. Respondents have filed written statement wherein they have not disputed factual accuracy of the matter. However it has been submitted that claim in the OA cannot be acceded to because applicant was offered appointment on 06.1.2016, therefore, seniority is to be given from this date and not from the date when his other batch mates were given appointment i.e. in the year 2012.

7. Applicant has filed a replication contradicting averments made in the written statement and reiterating that based upon decision in the case of Satinder Kumar (supra), benefit of which applicant is claiming, issue was again decided by this Court vide order dated 01.4.2013 in O.A. No.2-CH-2013 titled **Sundari and others vs. U.T. Chandigarh and others** (Annexure A-6) as upheld by CWP No.21656 of 2013 decided on 23.4.2014. Thus, discrimination has been alleged against the respondents while granting benefit, to one set of employees and denying to other.
8. We have heard learned counsel for the parties.
9. Learned counsel for the applicants has challenged impugned order on two counts and has argued that the impugned order, on face of it, is liable to be set aside as the same is non-speaking because respondents have not dealt with even a single plea raised by the applicants in their representations for grant of relevant benefit, thus he submitted that impugned order be set aside on this account alone. He further submitted that in the light of the judicial pronouncement in the case of Satinder Kumar (supra) also, impugned order is liable to set aside. To elaborate his argument, he submitted that out of two persons selected for the post of ASI pursuant to advertisement of 2007, one joined while other person Sh. Sanjiv Kumar did not join and ultimately his candidature was cancelled vide order dated 6.8.2013. In terms of standing order, respondents themselves were under obligation to offer appointment to next candidate in line on not joining of other candidate. When they did not move themselves, then pursuant to order of the High Court, respondents offered appointment to the applicant on

6.1.2016, thus they admitted the fact that wrong has been done to the applicant but did not consider his case for grant of consequential benefits including seniority from the date when other batch mates were given appointment despite law settled in the indicated judicial pronouncements by the Hon'ble High Court. It has also been argued that order in the case of Satinder Kumar (supra) has been complied with by the respondents by granting benefit. Not only this, in another case of Sundari (supra), which has been decided on the basis of Satinder Kumar's case order has been implemented. Thus, he alleged discrimination and submitted that the impugned order be set aside on account of step motherly treatment meted out to the applicants.

10. Per contra, Sh. Vinay Gupta, learned counsel for the respondents vehemently opposed prayer and argued that pursuant to order of the High Court, applicants have been offered appointment in the year 2016, thus seniority is to be counted from that date and not from earlier date i.e. 2012 when other persons were offered appointment. To buttress his claim, he placed reliance on the judgment in the case of **Sunaina Sharma & Ors. vs. State of Jammu and Kashmir** 2017 (4) SCT 639. Thus, he prayed that the O.A. be dismissed.
11. Sh. A.L. Nanda, who is appearing on behalf of the respondents in the case of Asha Devi in addition to what has been argued by Sh. Vinay Gupta, tried to persuade us that relevant claim cannot be acceded on the principle of res-judicata. He argued that in earlier O.A. No.60/262/2015, applicant had approached this Tribunal to quash order dated 24.2.2015, whereby her representation for appointment

as ASI, being at serial no.1 of general category, has been rejected, this Court disposed of the petition on 14.3.2016 as having been rendered infructuous as the respondents themselves had offered her appointment, thus he submitted that once relief has been granted therein then second petition on same cause is not maintainable for the same very relief.

12. We have given our thoughtful consideration to entire matter, gone through pleadings available on record and have perused law cited by learned counsel for respective parties.
13. We are convinced with the arguments raised by the learned counsel for the applicants that impugned order is non-speaking and thus liable to be set aside. Bare perusal of order makes it clear that the points raised by the applicants in representations have not been addressed by the respondents while rejecting their claim, thus order is non-speaking and liable to set aside. As per judicial pronouncements if an order is having civil consequence, then respondents have to give reasons while rejecting the claim of the employees. **Lord Denning M.R. in Breen v. Amalgamated Engg. Union** (1971) 1 All ER 1148, observed "The giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. V. Crabtree** 1974 ICR 120 (NIRC) it was observed "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". The same view has been expressed by Lordship in case of **Raj Kishore Jha versus State of Bihar & Others**, 2003(11) CC 519.

14. In the light of above judicial pronouncements itself, the impugned orders can be set aside, accordingly, the same are quashed and set aside in all the cases. Though we can remit matter back to respondents for passing fresh orders but considering that respondents have spelt out reasons for not acceding to request of the applicants in their written statements, therefore, it is not advisable to remit matter back to pass a fresh order, therefore, we deem it appropriate to decide the second issue raised by the applicants for giving them ante-dated appointment from the date when other persons were appointed in the same very selection in which applicants were selected.
15. A conjunctive perusal of the pleadings makes it clear that selection for the post of ASI was initiated on 18.2.2007 when respondents issued advertisement. After final selection, respondents themselves cancelled entire selection and decided to hold fresh selection from the stage of written examination, which was held on 5.6.2011. Meaning thereby from 2007 to 2011 selection process was not finalized. Annexures A-4 shows that they offered appointment for the first time to some of the selected candidates on 25.9.2012. Admittedly, out of two candidates selected in the category of ESM, candidate at serial no.2 namely Sh. Sanjiv Kumar did not join and ultimately his candidature was cancelled on 6.8.2013. Though original application filed by the applicant was dismissed by this Court but ultimately after intervention of Hon'ble High Court in judicial review sought by the applicant by filing CWP No.2546/2015, respondents came forward and offered appointment to him on 6.1.2016. Subsequently, writ petition was disposed of as having

been rendered infructuous with liberty to him to raise plea for grant of notional appointment from the date he became entitled before authority, who was to pass order. Claim of the applicant has been turned down by impugned order. Though the respondents tried to persuade us that benefit for ante-dated appointment based on judgment in the case of Sunaina Sharma (supra) cannot be granted, but we are convinced that facts in that case are entirely different from the present case. In this case, vacancy which was offered in the year 2012, after litigation, is the same which was available with the department for offering appointment to other candidate on 25.9.2013 and no new vacancy has been created subsequently. Vacancy is same as already notified in the year 2007. Since selected candidate did not join and his candidature was cancelled in the year 2013, which has been accepted by the respondents while offering appointment to applicant. Thus plea of the respondents that applicant cannot be given notional appointment from the date when other candidates were offered appointment cannot be accepted because there is no fault on the part of the applicant rather it was incumbent upon the respondents at that time that if vacancy fell vacant then they ought to have offered appointment to next candidate in waiting list i.e. applicant and he would have joined at that time i.e. in the year 2013 itself. Thus, for the fault of the respondents, applicant cannot be penalized. Our view is also fortified by judgment of the High Court in the case of Satinder Kumar (supra), wherein while deciding identical issue Hon'ble High Court had directed respondents to grant deemed date of

appointment to petitioner therein from the date as has been given to selected persons of the same selection.

16. In the wake of above narrated facts, we are left with no option but to quash impugned orders and accordingly, the same are quashed and set aside. Respondents are directed to grant applicants consequential seniority from the date when others were offered appointment/from the date of selection with due regard to their inter-se merit position in the said selection, and they be given notional benefit till they actually joined.
17. The O.As. are allowed in the above terms. No costs.

(PRADEEP KUMAR)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 28.11.2019.
Place: Chandigarh.

`KR'

